

**DECISION**



*Order*  
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**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D. C. 20548

FILE: B-203727

DATE: July 2, 1981

MATTER OF: Ingersoll-Rand Company

**DIGEST:**

1. Protest that competitive procurement should have been conducted on a sole-source basis is dismissed as untimely since it relates to solicitation deficiency and was not filed before bid opening as required by GAO Bid Protest Procedures.
2. Bidder bears risk of non-receipt of solicitation amendment unless failure to receive amendment is result of conscious and deliberate effort by contracting agency to exclude bidder from competition.

Ingersoll-Rand Company protests any award under invitation for bids DAAG-47-71-B-0067 issued by the Department of the Army to overhaul air compressors, which includes the supply of necessary spare parts. The protester states that the invitation specified Ingersoll-Rand or equal parts, and complains that the requirement instead should have been purchased from Ingersoll-Rand on a sole-source basis because only Ingersoll-Rand parts will meet the Army's need. The firm relies on Defense Acquisition Regulation (DAR) § 1-313 (1976 ed.) in this regard, which states that where parts for military equipment are to be procured and where the safe, dependable, and effective operation of the equipment can be assured only if the parts are bought from the original manufacturer, the procurement should be restricted accordingly. Ingersoll-Rand also protests that it did not receive an amendment to the invitation which added a wage rate determination.

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The protest is dismissed in part and summarily denied in part.

Regarding the basis on which bids were invited, section 20.2(b)(1) of our Bid Protest Procedures, 4 C.F.R. part 20 (1980), requires that a bid protest alleging an impropriety apparent from an invitation be filed before bid opening. The Army informally advises that bids were opened on June 9. Ingersoll-Rand's protest, however, was filed in our Office on June 19. Accordingly, the issue was not timely raised and will not be considered.

In any event, in view of the objective of our bid protest function to insure full and free competition for government contracts, as a general matter our Office will not review a protest that an agency should procure an item from a particular firm on a sole-source basis. Holosonics, Inc., B-192414, October 17, 1978, 78-2 CPD 282.

There is no legal merit to the protest that Ingersoll-Rand failed to receive the amendment adding the wage determination. The procuring activity is not the insurer of the delivery of bidding document to prospective bidders. Lexington Fire Protection Company, Inc., B-200844, October 28, 1980, 80-2 CPD 326. Rather, the bidder bears the risk of nonreceipt of a solicitation amendment unless the failure to receive is the result of a conscious and deliberate effort by the contracting activity to exclude the bidder from participating in the competition. G & H Aircraft, B-189264, October 28, 1977, 77-2 CPD 329.

The Army informally advises that it mailed the amendment to Ingersoll-Rand on May 11, and the firm does not allege that it failed to receive the amendment due to any deliberate effort by the agency to exclude Ingersoll-Rand. In this respect, we point out a bid which does not include acknowledgment of an amendment which adds a wage rate determination may not be considered for award.

Lexington Fire Protection Company, Inc., supra. The protest on this issue is summarily denied. See Jose Lopez & Sons Wholesale Fumigators, Inc., B-200849, February 12, 1981, 81-1 CPD 97.

*Milton J. Aroian*

Acting Comptroller General  
of the United States